IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 23 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PERIYAR INVESTMENTS PVT. LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 23 of 1992
MR RK PATEL for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 17/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions are referred to us in respect of assessment year 1982-83 :-

"1. Whether on the facts and in the circumstances of the case, the Tribunal is right in coming to the conclusion that the Commissioner of Income-tax had rightly assumed jurisdiction u/s.263 of the Act ?

2. Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that relief u/s. 80M of the Act is to be computed after deducting relief u/s. 80K of the Act ?"

2. At the hearing of the reference, the learned counsel for the assessee has fairly stated that since question No.2 is already decided by this Court in favour of the revenue, the assessee does not press for an answer to question No.1. In view of the above, question No.1 is not answered.

3. As far as question No.2 is concerned, the learned counsel for the parties agree that the controversy raised herein is concluded by the decision of this Court in CIT vs. Sarabhai & Sons, (1995) 211 ITR 20 wherein this Court held that in computing deductions allowable under sub-section (1) of Section 80M, the net dividend income should be reduced by the deductions allowable to the assessee under Section 80K, as provided in sub-section (2) of Section 80M.

4. In view of the above decision, we answer question No.2 in the affirmative i.e. in favour of the revenue and against the assessee.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-